



## SENATE BILL 730: Taxpayer Action if No DOR Determination

2011-2012 General Assembly

**Committee:** Senate Finance  
**Introduced by:** Sen. Clodfelter  
**Analysis of:** PCS to First Edition  
S730-CSSV-17

**Date:** May 18, 2011  
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**SUMMARY:** *The Proposed Committee Substitute for Senate Bill 730 provides that a taxpayer may seek a court order compelling the issuance of a final determination by the Department of Revenue if the Department fails to issue the determination within the required time. The bill would require the order to specify a deadline by which the Department must issue the notice. The bill would also authorize the court to order the Department to grant a taxpayer's refund or to remove a proposed assessment if the Department fails to issue the notice by the deadline.*

**CURRENT LAW:** Article 9 of Chapter 105 sets out the procedures under which a taxpayer may contest a proposed assessment or a proposed denial of a refund by the Department of Revenue.

**Review.** – A taxpayer who objects to a proposed denial of a refund or a proposed assessment may, within 45 days from the notice, file a request for review by the Department. The Departmental review is a two-step process consisting of an initial review followed by an informal conference. If the review results in the Department granting the refund or removing the assessment, the matter ends there. If the review does not resolve the dispute, the Department may request additional information from the taxpayer and must schedule a conference with the taxpayer.

**Conference.** –The conference is an informal process in which the Department and the taxpayer attempt to resolve the matter. If the Department and the taxpayer are unable to resolve the matter at conference, the Department must issue a final determination.

**Final Determination.** – A final determination represents the Department's decision regarding a proposed denial of a refund or a proposed assessment. It must be issued within nine months after the date the taxpayer filed a request for review, unless the Department and the taxpayer have mutually agreed to an extension. Once issued at the conclusion of the Departmental review process, it triggers the taxpayer's ability to seek further review. The final determination must state the basis for the determination and inform the taxpayer of the procedure for contesting it.

**Contested Case Hearing.** – A taxpayer who disagrees with the Department's final determination may file a petition for a contested case hearing with the Office of Administrative Hearings (OAH). The petition must be filed within 60 days from when notice of the agency decision is given. A taxpayer may proceed with a case at OAH only after the Department has issued a final determination.

**Court Order Under Chapter 150B.** – G.S. 150B-44 allows a person whose rights have been adversely affected by unreasonable delay on the part of any agency or administrative law judge (ALJ) to seek a court order compelling action by the agency or ALJ. While this provision could be interpreted to apply to any unreasonable delay by an agency, the statute speaks specifically to situations where an agency has failed to render a final decision in a timely manner after ALJ has issued a recommended decision in a contested case.

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**BILL ANALYSIS:** The PCS for Senate Bill 730 provides that if the Department of Revenue fails to issue a notice of final determination within the required time, it is grounds under the Administrative Procedure Act for a taxpayer to seek a court order compelling the Department to issue the notice. The taxpayer must file the proceeding in Superior Court in Wake County. This is consistent with the existing venue provision for judicial review of a final decision in a contested tax case. The bill would further require that any order compelling the Department to issue a notice of final determination specify a date by which the notice must be issued. If the Department fails to issue the notice by the specified date, the court may order the Department to grant the refund or remove the assessment.

**EFFECTIVE DATE:** This act is effective when it becomes law.

*S730-SMSV-47(CSSV-17) v1*